

DAVIDSON & COHEN, P.C.
ATTORNEYS AT LAW
265 SUNRISE HIGHWAY
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From
Janet Smitelli

To
David
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TO: _____

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FROM: _____

RE: _____

Thanks

SPECIAL INSTRUCTIONS: _____

IMPORTANT NOTICE

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SHEILA GREENBERG and BUDDIE GREENBERG,

Plaintiffs,

**MOTION REMANDING THE
ACTION TO STATE COURT**

-against-

Index No. 10675-07

HOME DEPOT U.S.A., INC.

Defendant.

-----X

The Plaintiffs, SHEILA GREENBERG and BUDDIE GREENBERG by their attorneys, DAVIDSON & COHEN, P.C. hereby moves this Court for an Order remanding the above entitled action to the Supreme Bronx State Court from whence the action was removed, on the grounds that notice of removal was untimely, so that all further proceedings of the matter including the trial may be had in this Court of original jurisdiction.

Dated: Rockville Centre, New York
December 12, 2007

Yours, etc.


Janet L.H. Smitelli, Esq.
DAVIDSON & COHEN, P.C. #1335

Attorneys for Plaintiff
265 Sunrise Highway
Rockville Centre, New York 11570
(516) 763-6700

TO: D'Amato & Lynch, LLP
Attorneys for Defendant
70 Pine Street
New York, New York 10270-0110

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SHEILA GREENBERG and BUDDIE GREENBERG,

Plaintiffs,

AFFIRMATION

-against-

Index No. 10675-07

HOME DEPOT U.S.A., INC.

Defendant.

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JANET L. HELLER SMITELLI, an attorney duly admitted to practice law before the Courts of the State of New York and before the Southern District of New York, hereby affirms the following under penalties of perjury:

I am associated with the law firm of Davidson & Cohen, P.C., attorneys for the plaintiff in the above entitled action and, as such, am familiar with this matter as evidenced by the file maintained by our office. This action arises out of a slip and fall accident at defendant's store which occurred on August 3, 2006. As a result, a Summons and Complaint dated Sept. 17, 2007, was served upon the defendant on Oct. 2, 2007, by service upon the Secretary of State. Annexed hereto as Exhibit "A" and "B" respectively, is a copy of the Summons & Complaint and affidavit of service. The index number was purchased in this matter on Sept. 24, 2007.

Defendant attorneys requested an extension of time within which to answer on Oct. 12, 2007 and issue was joined by service of an Answer by the defendant on Nov. 12, 2007. See copy of defendant's extension letter, answer and discovery demands annexed hereto as Exhibit "C", "D" and

“E” respectively.

Over two weeks thereafter, defendant attorney filed and served a Notice of Removal dated November 29, 2007. See copy of said Removal papers annexed hereto as Exhibit “F”. This Notice of Removal was clearly untimely and beyond the thirty day limitation period as outlined in 28 U.S.C.A. Section 1446.

In the case of Bertrand v. Vingan, 899 F.Supp. 1198 (S.D.N.Y. 1995), a defendant seeking removal must strictly comply with all statutory requirements, and where there is a doubt as to whether requirements have been satisfied, the case should be remanded. See also generally Citibank N.A. v. McGuirl 888 F.Supp 39 (S.D.N.Y. 1995).

Additionally, the party seeking to sustain removal not the party seeking remand bears the burden of demonstrating that the removal was proper see Wilds v. United Parcel Service Incorporated 262 F.Supp.2d 163 (S.D.N.Y. 2003) and Cassara v. Ralston 832 F.Supp 752 (S.D.N.Y. 1993).

Defendants have also failed to prove a complete diversity in this matter in that the defendant Home Depot derives substantial revenue from New York State. Defendant, Home Depot is the world's largest home improvement retailer operating more than 1500 stores across North America. According to their official website, their revenue in 2006 was \$90.837 billion. It is axiomatic therefore that this huge corporation has many connections with New York State and in fact has been a defendant in many New York actions according to “Elaw” and “Lexis” web sites.


The Courts generally strictly construe the removal statutes in favor of remand and against removal. See generally, Bosky v. Kroger Tex L.P. 288 F. 3rd 208, 211 (5th Circuit, 2002), also Diaz v. Shephard 85 F. 3rd 1502, 1505 (11th Circuit 1996). Brown v. Francis 75 F. 3rd 860, 864 and 865 (3rd Circuit 1996) and Duncan v. Stuetzle 76 F. 3rd 1480, 1485 (9th Circuit 1996).

In response to the grounds asserted by defendant, plaintiff herein claims that the defendant has served their Notice of Removal untimely and there is not complete diversity. Finally, if removal does not occur, the plaintiff will be prejudiced in that the court of original jurisdiction is better suited to handle these types of negligence cases and the location of the State Court is closer to the material witnesses and parties.

This action should immediately be remanded to the State Court from whence the action was removed. The defendant did not timely file and serve their removal papers and there has been no waiver or stipulation to extend this time period for Removal and no valid reason for the delay in filing the notice proffered by defense attorney. Additionally as set forth above there is incomplete diversity herein in that the defendant derives substantial revenue from this state.

WHEREFORE an Order remanding this action to the Bronx Supreme State Court is herein respectfully requested.

Affirmed: Rockville Centre, New York
December 12, 2007


JANET L. HELLER SMITELLI #1335

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X Index No. 301172-07
SHEILA GREENBERG and BUDDIE GREENBERG,

Plaintiffs,

-against-

HOME DEPOT U.S.A., INC.,

Defendant

Date filed:
Plaintiffs designate
BRONX County as the
place of trial

The basis of the venue is
Plaintiffs' residence

SUMMONS

Plaintiffs reside at
3135 Johnson Avenue
Bronx, New York 10463


County of Bronx
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To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiffs' attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Rockville Centre, New York
September 17, 2007

Yours, etc.



KEITH S. DAVIDSON, ESQ.
DAVIDSON & COHEN, P.C.
Attorneys for Plaintiffs
265 Sunrise Highway
Rockville Centre, New York 11570
(516) 763-6700

Defendant's address:

HOME DEPOT U.S.A., INC.
c/o CORPORATION SERVICE
COMPANY
80 STATE STREET
ALBANY, NEW YORK 12207-2543

FOURTH: That at all times hereinafter mentioned, the defendant, HOME DEPOT U.S.A., INC., owned premises located at 68 Thompson Square, Monticello, County of Sullivan, State of New York.

FIFTH: That at all times hereinafter mentioned, the defendant, HOME DEPOT U.S.A., INC., owned the Home Depot store located at 68 Thompson Square, Monticello, County of Sullivan, State of New York.

SIXTH: That at all times hereinafter mentioned, the defendant, HOME DEPOT U.S.A., INC., operated the Home Depot store located at 68 Thompson Square, Monticello, County of Sullivan, State of New York.

SEVENTH: That at all times hereinafter mentioned, the defendant, HOME DEPOT U.S.A., INC., supervised the Home Depot store located at 68 Thompson Square, Monticello, County of Sullivan, State of New York.

EIGHTH: That at all times hereinafter mentioned, the defendant, HOME DEPOT U.S.A., INC., controlled the Home Depot store located at 68 Thompson Square, Monticello, County of Sullivan, State of New York.

NINTH: That at all times hereinafter mentioned, the defendant, HOME DEPOT U.S.A., INC., maintained the Home Depot store located at 68 Thompson Square, Monticello, County of Sullivan, State of New York.

TENTH: That it was the duty of the defendant to maintain the aforesaid premises in a safe condition for persons visiting same.

ELEVENTH: That on the 3rd day of August, 2006, while the plaintiff, SHEILA GREENBERG, was lawfully a patron at the aforementioned store, she was caused to be injured due to the negligence of the defendant.

TWELFTH: That the negligence of the defendants consisted, amongst other things, in failing to keep the aforesaid premises in a reasonably safe condition; in failing to perform proper inspections; in failing to perform proper clean-up operations; in causing and/or permitting hazardous, slippery and dangerous condition to exist at the premises aforementioned; in failing to post signs or warnings at the location aforesaid; and in otherwise being negligent in the premises.

THIRTEENTH: That the defendant actually created the condition complained of and had actual and constructive notice of the aforesaid condition prior to the occurrence herein.

FOURTEENTH: That said incident and injuries to the plaintiff were caused solely and wholly by reason of the negligence of the defendant and without any negligence on the part of the plaintiff contributing thereto.

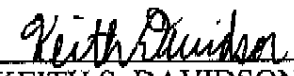
FIFTEENTH: That this action falls within one or more of the exceptions set forth in CPLR §1602.

SIXTEENTH: That as result of the foregoing, the plaintiff was injured, both physically and mentally, in an amount which exceeds the jurisdictional limits of all lower Courts that would otherwise have jurisdiction.

3rd day of August, 2006 plus the costs and disbursements of this action.

Dated: Rockville Centre, New York
September 17, 2007

Yours, etc.



KEITH S. DAVIDSON, ESQ.
DAVIDSON & COHEN, P.C.
Attorneys for Plaintiff
265 Sunrise Highway
Rockville Centre, New York 11570
(516) 763-6700

AS AND FOR A SECOND CAUSE OF ACTION IN FAVOR OF
PLAINTIFF, BUDDIE GREENBERG:

SEVENTEENTH: That this plaintiff repeats, reiterates, realleges and reaffirms each and every allegation contained in this complaint in paragraphs numbered "FIRST" through and including "SIXTEENTH" with the same force and effect as though fully set forth at length herein.

EIGHTEENTH: That heretofore and all the times hereinafter mentioned, this plaintiff was and still is the husband of the plaintiff, SHEILA GREENBERG, and resides with said plaintiff in a common household, and as such is entitled to the services, comfort and society of his said wife, SHEILA GREENBERG.

NINETEENTH: That by reason of the foregoing, and the wrongful, unlawful and negligent acts and omissions on the part of the defendant as aforesaid and due to the injuries sustained by the aforesaid plaintiff, SHEILA GREENBERG, this plaintiff was and will be deprived of the services, comfort and society of his said wife, the plaintiff, SHEILA GREENBERG, all to this plaintiff's damage in an amount which exceeds the jurisdictional limits of all lower Courts that would otherwise have jurisdiction.

WHEREFORE, the plaintiff, SHEILA GREENBERG, demands judgment against the defendant on her cause of action in a sum which exceeds the jurisdictional limits of all lower Courts, that would otherwise have jurisdiction and the plaintiff, BUDDIE GREENBERG, demands judgment against the defendant on his cause of action in a sum which exceeds the jurisdictional limits of all lower Courts, that would otherwise have jurisdiction, TOGETHER with interest thereon from the

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SHEILA GREENBERG and BUDDIE GREENBERG,

Plaintiffs,

**MOTION REMANDING THE
ACTION TO STATE COURT**

-against-

Index No. 10675-07

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Defendant.

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Dated: Rockville Centre, New York
December 12, 2007

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Janet L.H. Smitelli, Esq.
DAVIDSON & COHEN, P.C.
Attorneys for Plaintiff
265 Sunrise Highway
Rockville Centre, New York 11570
(516) 763-6700

TO: D'Amato & Lynch, LLP
Attorneys for Defendant
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Defendants have also failed to prove a complete diversity in this matter in that the defendant Home Depot derives substantial revenue from New York State. Defendant, Home Depot is the world’s largest home improvement retailer operating more than 1500 stores across North America. According to their official website, their revenue in 2006 was \$90.837 billion. It is axiomatic therefore that this huge corporation has many connections with New York State and in fact has been a defendant in many New York actions according to “Elaw” and “Lexis” web sites.

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JANET L. HELLER SMITELLI

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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SHEILA GREENBERG and BUDDIE GREENBERG,

Plaintiffs,

-against-

HOME DEPOT U.S.A., INC.,

Defendant

Date filed:
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The basis of the venue is
Plaintiffs' residence

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September 17, 2007

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KEITH S. DAVIDSON, ESQ.
DAVIDSON & COHEN, P.C.
Attorneys for Plaintiffs
265 Sunrise Highway
Rockville Centre, New York 11570
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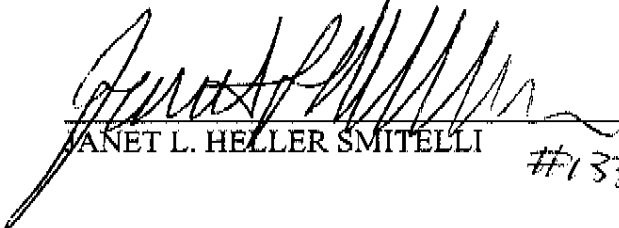
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COUNTY CLERK
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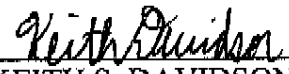
FIFTEENTH: That this action falls within one or more of the exceptions set forth in CPLR §1602.

SIXTEENTH: That as result of the foregoing, the plaintiff was injured, both physically and mentally, in an amount which exceeds the jurisdictional limits of all lower Courts that would otherwise have jurisdiction.

3rd day of August, 2006 plus the costs and disbursements of this action.

Dated: Rockville Centre, New York
September 17, 2007

Yours, etc.



KEITH S. DAVIDSON, ESQ.
DAVIDSON & COHEN, P.C.
Attorneys for Plaintiff
265 Sunrise Highway
Rockville Centre, New York 11570
(516) 763-6700

AS AND FOR A SECOND CAUSE OF ACTION IN FAVOR OF
PLAINTIFF, BUDDIE GREENBERG:

SEVENTEENTH: That this plaintiff repeats, reiterates, realleges and reaffirms each and every allegation contained in this complaint in paragraphs numbered "FIRST" through and including "SIXTEENTH" with the same force and effect as though fully set forth at length herein.

EIGHTEENTH: That heretofore and all the times hereinafter mentioned, this plaintiff was and still is the husband of the plaintiff, SHEILA GREENBERG, and resides with said plaintiff in a common household, and as such is entitled to the services, comfort and society of his said wife, SHEILA GREENBERG.

NINETEENTH: That by reason of the foregoing, and the wrongful, unlawful and negligent acts and omissions on the part of the defendant as aforesaid and due to the injuries sustained by the aforesaid plaintiff, SHEILA GREENBERG, this plaintiff was and will be deprived of the services, comfort and society of his said wife, the plaintiff, SHEILA GREENBERG, all to this plaintiff's damage in an amount which exceeds the jurisdictional limits of all lower Courts that would otherwise have jurisdiction.

WHEREFORE, the plaintiff, SHEILA GREENBERG, demands judgment against the defendant on her cause of action in a sum which exceeds the jurisdictional limits of all lower Courts, that would otherwise have jurisdiction and the plaintiff, BUDDIE GREENBERG, demands judgment against the defendant on his cause of action in a sum which exceeds the jurisdictional limits of all lower Courts, that would otherwise have jurisdiction, TOGETHER with interest thereon from the

DAVIDSON & COHEN, P.C.
ATTORNEYS AT LAW
265 SUNRISE HIGHWAY
ROCKVILLE CENTRE, NEW YORK 11570

(516) 763-6700
(516) 763-0567 FACSIMILE

BRUCE E. COHEN
KEITH S. DAVIDSON
JANET L.H. SMITELLI

TELECOPY FOR IMMEDIATE DELIVERY

TOTAL PAGES:
(Including cover sheet)

29

From
Janet Smitelli

To
David
(my sister)

DATE: _____

TO: _____

FAX NO.: _____

FROM: _____

RE: _____

marks

SPECIAL INSTRUCTIONS: _____

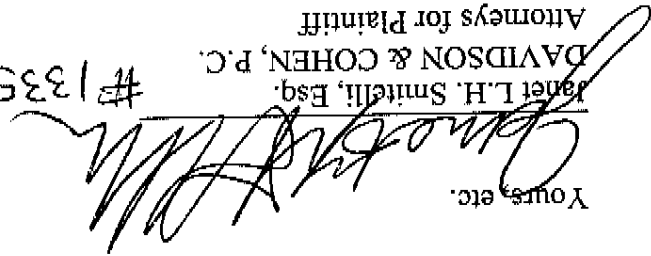
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1

TO: D'Amato & Lynch, LLP
Attorneys for Defendant
70 Pine Street
New York, New York 10270-0110

Attorneys for Plaintiff
265 Sunrise Highway
Rockville Centre, New York 11570
(516) 763-6700


Janet L.H. Smietili, Esq.
DAVIDSON & COHEN, P.C.
#1335

Yours, etc.

Dated: Rockville Centre, New York
December 12, 2007

be had in this Court of original jurisdiction.

The Plaintiffs, SHEILA GREENBERG and BUDDIE GREENBERG by their attorneys,
DAVIDSON & COHEN, P.C. hereby moves this Court for an Order remanding the above entitled
action to the Supreme Bronx State Court from whence the action was removed, on the grounds that
notice of removal was untimely, so that all further proceedings of the matter including the trial may

-----X

Defendant.

HOME DEPOT U.S.A., INC.

Index No. 10675-07

-against-

MOTION REMANDING THE
ACTION TO STATE COURT

Plaintiffs,

SHEILA GREENBERG and BUDDIE GREENBERG,

-----X

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Defendant attorneys requested an extension of time within which to answer on Oct. 12, 2007 and issue was joined by service of an Answer by the defendant on Nov. 12, 2007. See copy of defendant's extension letter, answer and discovery demands annexed hereto as Exhibit "C", "D" and as Exhibit "A" and "B" respectively, is a copy of the Summons & Complaint and affidavit of service. The index number was purchased in this matter on Sept. 24, 2007.

I am associated with the law firm of Davidson & Cohen, P.C., attorneys for the plaintiff in the above entitled action and, as such, am familiar with this matter as evidenced by the file maintained by our office. This action arises out of a slip and fall accident at defendant's store which occurred on August 3, 2006. As a result, a Summons and Complaint dated Sept. 17, 2007, was served upon the defendant on Oct. 2, 2007, by service upon the Secretary of State. Annexed hereto

following under penalties of perjury:

JANET L. HELLER SMITHELL, an attorney duly admitted to practice law before the Courts of the State of New York and before the Southern District of New York, hereby affirms the

-----X

Defendant.

HOME DEPOT U.S.A., INC.

Index No. 10675-07

-against-

AFFIRMATION

Plaintiffs,

SHEILA GREENBERG and BUDDIE GREENBERG,

-----X

SOUTHERN DISTRICT OF NEW YORK
UNITED STATES DISTRICT COURT

"E" respectively.

Over two weeks thereafter, defendant attorney filed and served a Notice of Removal dated November 29, 2007. See copy of said Removal papers annexed hereto as Exhibit "F". This Notice of Removal was clearly untimely and beyond the thirty day limitation period as outlined in 28 U.S.C.A. Section 1446.

In the case of Bertrand v. Vingan, 899 F.Supp. 1198 (S.D.N.Y. 1995), a defendant seeking removal must strictly comply with all statutory requirements, and where there is a doubt as to whether requirements have been satisfied, the case should be remanded. See also generally Citibank N.A. v. McGuil, 888 F.Supp 39 (S.D.N.Y. 1995).

Additionally, the party seeking to sustain removal not the party seeking remand bears the burden of demonstrating that the removal was proper see Wilds v. United Parcel Service Incorporated, 262 F.Supp.2d 163 (S.D.N.Y. 2003) and Cassara v. Ralston, 832 F.Supp 752 (S.D.N.Y. 1993).

Defendants have also failed to prove a complete diversity in this matter in that the defendant Home Depot derives substantial revenue from New York State. Defendant, Home Depot is the world's largest home improvement retailer operating more than 1500 stores across North America. According to their official website, their revenue in 2006 was \$90.837 billion. It is axiomatic therefore that this huge corporation has many connections with New York State and in fact has been a defendant in many New York actions according to "Blaw" and "Lexis" web sites.

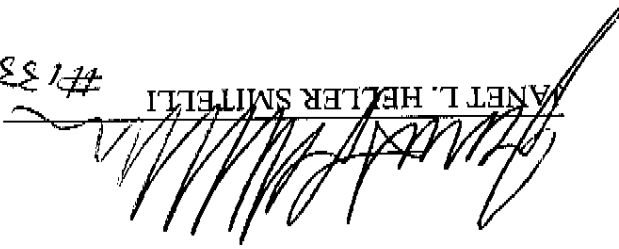
The Courts generally strictly construe the removal statutes in favor of remand and against removal. See generally, Bosky v. Kroger Tex.L.P., 288 F. 3rd 208, 211 (5th Circuit, 2002), also Diaz v. Shephard 85 F. 3rd 1502, 1505 (11th Circuit 1996). Brown v. Francis, 75 F. 3rd 860, 864 and 865 (3rd Circuit 1996) and Duncan v. Stuetzle 76 F. 3rd 1480, 1485 (9th Circuit 1996).

In response to the grounds asserted by defendant, plaintiff herein claims that the defendant has served their Notice of Removal untimely and there is not complete diversity. Finally, if removal does not occur, the plaintiff will be prejudiced in that the court of original jurisdiction is better suited to handle these types of negligence cases and the location of the State Court is closer to the material witnesses and parties.

This action should immediately be remanded to the State Court from whence the action was removed. The defendant did not timely file and serve their removal papers and there has been no waiver or stipulation to extend this time period for Removal and no valid reason for the delay in filing the notice proffered by defense attorney. Additionally as set forth above there is incomplete diversity herein in that the defendant derives substantial revenue from this state.

WHEREFORE an Order remanding this action to the Bronx Supreme State Court is herein respectfully requested.

Affirmed: Rockville Centre, New York
December 12, 2007


JANET L. HELLER SMITTELLI
#1335

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

X

Index No.

SHEILA GREENBERG and BUDDIE GREENBERG,

Plaintiffs,

Date filed: _____
Plaintiffs designate
BRONX County as the
place of trial

-against-

HOME DEPOT U.S.A., INC.,

Defendant

Plaintiffs reside at
3135 Johnson Avenue
Bronx, New York 10463

County of Bronx

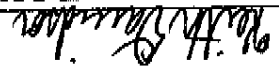
X

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiffs' attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Rockville Centre, New York
September 17, 2007

Yours, etc.



KEITH S. DAVIDSON, ESQ.
DAVIDSON & COHEN, P.C.
Attorneys for Plaintiffs
265 Sunrise Highway
Rockville Centre, New York 11570
(516) 763-6700

RECEIVED
07 SEP 24 PM 3:04
COUNTY CLERK
BRONX COUNTY

HOME DEPOT U.S.A., INC.
c/o CORPORATION SERVICE
COMPANY
80 STATE STREET
ALBANY, NEW YORK 12207-2543

Defendant's address:

RECEIVED

07 SEP 24 PM 3:05

COUNTY CLERK
BRONX COUNTY

INC., was a foreign business corporation doing business in the State of New York.

THIRD: That at all times hereinafter mentioned, the defendant, HOME DEPOT U.S.A.,

York.

INC., was a foreign business corporation duly authorized to transact business in the State of New

SECOND: That at all times hereinafter mentioned, the defendant, HOME DEPOT U.S.A.,

County of Bronx, State of New York.

FIRST: That at all times hereinafter mentioned, the plaintiff was an adult resident of the**PLAINTIFF, SHEILA GREENBERG:****AS AND FOR A FIRST CAUSE OF ACTION IN FAVOR OF**

and allege:

DAVIDSON & COHEN, P.C., complaining of the defendant herein, respectfully show to this Court

Plaintiffs, SHEILA GREENBERG and BUDDIE GREENBERG, by their attorneys,

-----X

Defendant.

HOME DEPOT U.S.A., INC.

Index No.

-against-

VERIFIED COMPLAINT

Plaintiffs,

SHEILA GREENBERG and BUDDIE GREENBERG,

-----X

COUNTY OF BRONX
SUPREME COURT OF THE STATE OF NEW YORK

condition for persons visiting same.

TENTH: That it was the duty of the defendant to maintain the aforesaid premises in a safe

Sullivan, State of New York.

INC., maintained the Home Depot store located at 68 Thompson Square, Monticello, County of

NINTH: That at all times hereinafter mentioned, the defendant, HOME DEPOT U.S.A.,

Sullivan, State of New York.

INC., controlled the Home Depot store located at 68 Thompson Square, Monticello, County of

EIGHTH: That at all times hereinafter mentioned, the defendant, HOME DEPOT U.S.A.,

Sullivan, State of New York.

INC., supervised the Home Depot store located at 68 Thompson Square, Monticello, County of

SEVENTH: That at all times hereinafter mentioned, the defendant, HOME DEPOT U.S.A.,

Sullivan, State of New York.

INC., operated the Home Depot store located at 68 Thompson Square, Monticello, County of

SIXTH: That at all times hereinafter mentioned, the defendant, HOME DEPOT U.S.A.,

State of New York.

INC., owned the Home Depot store located at 68 Thompson Square, Monticello, County of Sullivan,

FIFTH: That at all times hereinafter mentioned, the defendant, HOME DEPOT U.S.A.,

York.

INC., owned premises located at 68 Thompson Square, Monticello, County of Sullivan, State of New

FOURTH: That at all times hereinafter mentioned, the defendant, HOME DEPOT U.S.A.,

ELEVENTH: That on the 3rd day of August, 2006, while the plaintiff, SHEILA GREENBERG, was lawfully a patron at the aforementioned store, she was caused to be injured due to the negligence of the defendant.

TWELFTH: That the negligence of the defendants consisted, amongst other things, in failing to keep the aforesaid premises in a reasonably safe condition; in failing to perform proper inspections; in failing to perform proper clean-up operations; in causing and/or permitting hazardous, slippery and dangerous condition to exist at the premises aforementioned; in failing to post signs or warnings at the location aforesaid; and in otherwise being negligent in the premises.

THIRTEENTH: That the defendant actually created the condition complained of and had actual and constructive notice of the aforesaid condition prior to the occurrence herein.

FOURTEENTH: That said incident and injuries to the plaintiff were caused solely and wholly by reason of the negligence of the defendant and without any negligence on the part of the plaintiff contributing thereto.

FIFTEENTH: That this action falls within one or more of the exceptions set forth in CPLR §1602.

SIXTEENTH: That as result of the foregoing, the plaintiff was injured, both physically and mentally, in an amount which exceeds the jurisdictional limits of all lower Courts that would otherwise have jurisdiction.

otherwise have jurisdiction. **WHEREFORE**, the plaintiff, SHEILA GREENBERG, demands judgment against the defendant on her cause of action in a sum which exceeds the jurisdictional limits of all lower Courts, that would otherwise have jurisdiction and the plaintiff, BUDDIE GREENBERG, demands judgment against the defendant on his cause of action in a sum which exceeds the jurisdictional limits of all lower Courts, that would otherwise have jurisdiction, TOGETHER with interest thereon from the

damage in an amount which exceeds the jurisdictional limits of all lower Courts that would comfort and society of his said wife, the plaintiff, SHEILA GREENBERG, all to this plaintiff's aforesaid plaintiff, SHEILA GREENBERG, this plaintiff was and will be deprived of the services, acts and omissions on the part of the defendant as aforesaid and due to the injuries sustained by the **NINETEENTH:** That by reason of the foregoing, and the wrongful, unlawful and negligent SHEILA GREENBERG.

a common household, and as such is entitled to the services, comfort and society of his said wife, and still is the husband of the plaintiff, SHEILA GREENBERG, and resides with said plaintiff in **EIGHTEENTH:** That heretofore and all the times hereinafter mentioned, this plaintiff was "SIXTEENTH" with the same force and effect as though fully set forth at length herein.

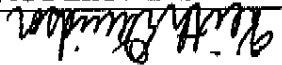
SEVENTEENTH: That this plaintiff repeats, reiterates, realleges and reaffirms each and

PLAINTIFF, BUDDIE GREENBERG:

AS AND FOR A SECOND CAUSE OF ACTION IN FAVOR OF

5

KEITH S. DAVIDSON, ESQ.
DAVIDSON & COHEN, P.C.
Attorneys for Plaintiff
265 Sunrise Highway
Rockville Centre, New York 11570
(516) 763-6700



Yours, etc.

Dated: Rockville Centre, New York
September 17, 2007

3rd day of August, 2006 plus the costs and disbursements of this action.

KEITH S. DAVIDSON

Keith Davidson

Dated: Rockville Centre, New York
September 17, 2007

The undersigned, an attorney duly admitted to practice law in the Courts of the State of New York, hereby affirms the following pursuant to CPLR 2106:

Your affiant is a member of the law firm of DAVIDSON & COHEN, P.C., the attorneys of record for the plaintiff in the within action; your affiant has read the foregoing **SUMMONS and VERIFIED COMPLAINT** and knows the contents thereof; the same is true to your affiant's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters your affiant believes it to be true. This verification is made by your affiant and not by plaintiff in that plaintiff does not reside within the county wherein the undersigned affiant maintains his office.

The grounds of your affiant's belief as to all matters not stated upon your affiant's knowledge are as follows: Information and papers contained in affiant's file and conversations with plaintiff.

Invoice-Work Order # 0720140

NOTARY PUBLIC, State of New York
No. 01006159874, Albany County
Commission Expires Jan 8, 2011
FAITH COZZI

2nd day of
October, 2007

Robin Brandon

Sworn to before me on this

defendant.

Deponent further says that deponent knew the person so served as aforesaid to be the agent in the Office of the Secretary of State of the State of New York, duly authorized to accept such service on behalf of said

was made pursuant to Section BUSINESS CORPORATION LAW §306.

making such service, deponent paid said Secretary of State a fee of 40.00 dollars. That said service

Office of the Secretary of State of the State of New York, two (2) true copies thereof and that at the time of

AUTHORIZED AGENT in the Office of the Secretary of State, of the State of New York, personally at the

Defendant in this action, by delivering to and leaving with Donna Christie,

Home Depot U.S.A., Inc., the

on Summons & Verified Complaint

Secretary of State of the State of New York in the City of Albany, New York deponent served the annexed

the age of eighteen (18) years; that on October 2, 2007, at 11:30am, at the office of the

Robin Brandon, being duly sworn, deposes and says: deponent is over

Hair color: Blonde Other:

Weight: 155 Lbs Height: 5'5 Sex: Female Color of skin: White

Approx. Age: 45 yrs

DESCRIPTION OF PERSON SERVED:

STATE OF NEW YORK)
COUNTY OF ALBANY) SS
CITY OF ALBANY)

Home Depot U.S.A., Inc. Defendant

against

Shella Greenberg and Buddie Greenberg Plaintiff

Bronx County

Supreme Court

State of New York

AFFIDAVIT OF SERVICE ON A CORPORATION BY THE SECRETARY OF STATE

Purchased/Filed: September 24, 2007

Index # 301172-07

State of New York - Department of State
Receipt for Service

Cash #: 200710030159
Fee Paid: \$40 - CHECK
Receipt #: 200710030216
Date of Service: 10/02/2007
Service Company: 02 ALEXANDER POOLE & CO., INC. - 02
Service was directed to be made pursuant to: SECTION 306 OF THE BUSINESS CORPORATION LAW

Party Served: HOME DEPOT U.S.A., INC.

Plaintiff/petitioner:
GREENBERG, SHEILA

Service of Process Address:
C/O CORPORATION SERVICE COMPANY
80 STATE STREET
ALBANY, NY 12207-2543

Secretary of State
BY DONNA CHRISTIE